

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DEMETROIS T. DIXSON,  
Plaintiff,  
v.  
F. MOHAMMAD,  
Defendant.

2:24-cv-00332 SCR P

ORDER

Plaintiff Demetrois Dixon, a state prisoner, proceeds without counsel and seeks relief under 42 U.S.C. § 1983. This matter was referred to the undersigned pursuant to Local Rule 302. See 28 U.S.C. § 636(b)(1). Plaintiff's complaint and motion to proceed in forma pauperis are before the court. The complaint states an Eighth Amendment excessive force claim and a First Amendment retaliation claim against defendant Mohammad, but fails to state any other claims upon which relief can be granted. Plaintiff may use the attached form to notify the court whether he will proceed on the complaint as screened or file an amended complaint.

**I. In Forma Pauperis**

Plaintiff's declarations in support of the motion to proceed in forma pauperis (ECF Nos. 5, 8) make the showing required by 28 U.S.C. § 1915(a). The request to proceed in forma pauperis is granted. By separate order, plaintiff will be assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. § 1915(b)(1). The order will direct the appropriate agency to

1 collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the  
 2 Court. Thereafter, plaintiff will be obligated for monthly payments of twenty percent of the  
 3 preceding month's income credited to plaintiff's prison trust account. These payments will be  
 4 forwarded by the appropriate agency to the Clerk of the Court each time the amount in plaintiff's  
 5 account exceeds \$10.00 until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

## 6 **II. Screening Requirement**

7 Pursuant to 28 U.S.C. § 1915(e), the court must screen every in forma pauperis  
 8 proceeding, and must order dismissal of the case if it is "frivolous or malicious," "fails to state a  
 9 claim on which relief may be granted," or "seeks monetary relief against a defendant who is  
 10 immune from such relief." 28 U.S.C. § 1915(e)(2)(B); Lopez v. Smith, 203 F.3d 1122, 1126-27  
 11 (2000). A claim is legally frivolous when it lacks an arguable basis either in law or in fact.  
 12 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th  
 13 Cir. 1984). The court may dismiss a claim as frivolous if it is based on an indisputably meritless  
 14 legal theory or where the factual contentions are clearly baseless. Neitzke, 490 U.S. at 327.

15 Rule 8(a)(2) of the Federal Rules of Civil Procedure requires a short and plain statement  
 16 of the claim that shows the pleader is entitled to relief. Bell Atlantic Corp. v. Twombly, 550 U.S.  
 17 544, 555 (2007). In order to state a cognizable claim, a complaint must contain more than "a  
 18 formulaic recitation of the elements of a cause of action;" it must contain factual allegations  
 19 sufficient "to raise a right to relief above the speculative level." Id. The facts alleged must "give  
 20 the defendant fair notice of what the... claim is and the grounds upon which it rests." Erickson v.  
 21 Pardus, 551 U.S. 89, 93 (2007) (quoting Twombly, 550 U.S. at 555). In reviewing a complaint  
 22 under this standard, the court accepts as true the allegations of the complaint and construes the  
 23 pleading in the light most favorable to the plaintiff. See id.; Scheuer v. Rhodes, 416 U.S. 232, 236  
 24 (1974).

## 25 **III. Allegations in the Complaint**

26 On July 3, 2023, at California Medical Facility, plaintiff approached the front door of his  
 27 unit to be released from the building to attend "DRP" class. (ECF No. 1 at 8.) Defendant, C/O  
 28 Mohammad, demanded to see plaintiff's DRP card. (Id.) When plaintiff showed the card,

1 defendant stated it was “no-good.” (Id.) Plaintiff suggested defendant call the DRP officer. (Id.)

2 Defendant ordered plaintiff to the dayroom. (ECF No. 1 at 8.) Plaintiff attempted to show  
3 another DRP card to defendant, who stated, “I don’t want to see no other I.D.” and violently  
4 grabbed plaintiff’s wrist. (Id. at 9.) Defendant’s fingernails scratched plaintiff and defendant  
5 twisted plaintiff’s wrist to get the card in plaintiff’s hand, causing pain and injuries. (Id.)

6 Plaintiff filed a “Citizen Complaint” on July 14, 2023. (ECF No. 1 at 10.) On July 30,  
7 2023, defendant wrote a “false 115 RVR” charging plaintiff with using disrespectful language.  
8 (Id.) In November 2023, the RVR was reduced to a “128-G Chrono” due to there being no  
9 independent evidence to substantiate a finding for a serious RVR. (Id.) After the RVR was  
10 reduced, defendant’s co-workers came to plaintiff’s cell and confiscated all his personal property  
11 for approximately over a month. (Id.)

12 The complaint alleges violations of plaintiff’s rights under the First, Eighth, and  
13 Fourteenth Amendments. (ECF No. 1 at 3-5.) Plaintiff seeks monetary compensation, declaratory  
14 judgment, and injunctive relief. (Id. at 6.)

#### 15 **IV. Discussion**

##### 16 **A. 42 U.S.C. § 1983**

17 A plaintiff may bring an action under 42 U.S.C. § 1983 to redress violations of “rights,  
18 privileges, or immunities secured by the Constitution and [federal] laws” by a person or entity,  
19 including a municipality, acting under the color of state law. 42 U.S.C. § 1983. To state a claim  
20 under § 1983, a plaintiff must show (1) the defendant committed the alleged conduct while acting  
21 under color of state law; and (2) the plaintiff was deprived of a constitutional right as a result of  
22 the defendant’s conduct. Balistreri v. Pacifica Police Dep’t, 901 F.2d 696, 699 (9th Cir. 1988).

23 As set forth below, plaintiff’s complaint states an Eighth Amendment excessive force  
24 claim and a First Amendment retaliation claim. Plaintiff’s complaint does not state a claim under  
25 the Fourteenth Amendment.

##### 26 **B. Excessive Force (Eighth Amendment)**

27 The unnecessary and wanton infliction of pain constitutes cruel and unusual punishment  
28 prohibited by the Eighth Amendment. Whitley v. Albers, 475 U.S. 312, 319 (1986); U.S. Const.

1 amend. VIII. In order to establish a claim for the use of excessive force in violation of the Eighth  
 2 Amendment, a plaintiff must establish that prison officials applied force maliciously and  
 3 sadistically to cause harm, rather than in a good-faith effort to maintain or restore discipline.  
 4 Hudson v. McMillian, 503 U.S. 1, 6-7 (1992); see also Clement v. Gomez, 298 F.3d 898, 903 (9th  
 5 Cir. 2002). The relevant factors may include (1) the need for application of force, (2) the  
 6 relationship between that need and the amount of force used, (3) the threat reasonably perceived  
 7 by the responsible officials, and (4) any efforts made to temper the severity of a forceful response.  
 8 Hudson, 503 U.S. at 7.

9 Plaintiff states a claim for relief against defendant Mohammad for excessive force in  
 10 violation of the Eighth Amendment. No such claim is available under the Fourteenth Amendment.  
 11 Excessive-force claims concerning incarcerated persons serving a term of imprisonment arise  
 12 under the Eighth Amendment, so this claim cannot be analyzed under the Fourteenth  
 13 Amendment's generalized notions of substantive due process. See United States v. Lanier, 520  
 14 U.S. 259, 272 n.7 (1997).

### 15 C. Retaliation (First Amendment)

16 Plaintiff also states a First Amendment retaliation claim against defendant Mohammad. A  
 17 retaliation claim in the prison context has five elements. Brodheim v. Cry, 584 F.3d 1262, 1269  
 18 (9th Cir. 2009); Watison v. Carter, 668 F.3d 1108, 1114 (2012). First, the plaintiff must allege he  
 19 engaged in protected conduct, such as the filing of an inmate grievance. Rhodes v. Robinson, 408  
 20 F.3d 559, 567 (9th Cir. 2005). Second, the plaintiff must allege the defendant took adverse action  
 21 against the plaintiff. Id. Third, the plaintiff must allege a causal connection between the adverse  
 22 action and the protected conduct. Watison, 668 F.3d at 1114. Fourth, the plaintiff must allege that  
 23 the "official's acts would chill or silence a person of ordinary firmness from future First  
 24 Amendment activities." Rhodes, 408 F.3d at 568-69 (internal quotation marks and emphasis  
 25 omitted). Fifth, the plaintiff must allege "the prison authorities' retaliatory action did not advance  
 26 legitimate goals of the correctional institution or was not tailored narrowly enough to achieve  
 27 such goals." Rizzo v. Dawson, 778 F.2d 527, 532 (9th Cir. 1985).

28 Plaintiff adequately alleges defendant took adverse action which did not advance

1 legitimate goals of the correctional institution and which was motivated by plaintiff's protected  
2 conduct of filing a Citizen Complaint. Plaintiff also adequately alleges defendant's conduct would  
3 chill or silence a person of ordinary firmness from future First Amendment activities. Plaintiff  
4 may proceed on a retaliation claim.

5 **D. No Other Claims**

6 The complaint fails to state a claim based on defendant allegedly issuing plaintiff a false  
7 RVR. The filing of a false report by a prison official against a prisoner is not, by itself, a violation  
8 of the prisoner's constitutional rights. See Freeman v. Rideout, 808 F.2d 949, 951 (2nd Cir. 1986);  
9 Hanrahan v. Lane, 747 F.2d 1137, 1140-41 (7th Cir. 1984); Harper v. Costa, No. CIV S-07-2149  
10 LKK DAD P, 2009 WL 1684599, at \*2-3 (E.D. Cal., June 16, 2009), *aff'd*, 393 Fed. Appx. 488  
11 (9th Cir. 2010) ("district courts throughout California ... have determined that a prisoner's  
12 allegation that prison officials issued a false disciplinary charge against him fails to state a  
13 cognizable claim for relief under § 1983"). Thus, the alleged falsification of a disciplinary report  
14 does not present a stand-alone constitutional claim. See Luster v. Amezcua, No. 1:16-cv-0554-  
15 DAD-GSA-PC, 2017 WL 772141, at \*5 (E.D. Cal. Feb. 27, 2017).

16 In addition, the complaint does not state a claim for deprivation of plaintiff's property. See  
17 Barnett v. Centoni, 31 F.3d 813, 816-17 (9th Cir. 1994) (per curiam) (deprivation of a prisoner's  
18 property fails to state a claim under 42 U.S.C. § 1983 because California state law provides an  
19 adequate post-deprivation remedy). An exception to this general rule exists when the official  
20 acted pursuant to an established procedure. See Zimmerman v. City of Oakland, 255 F.3d 734,  
21 738 (9th Cir. 2001). Plaintiff's allegations do not invoke the exception. Under the circumstances,  
22 plaintiff does not state a due process claim based on deprivation of property.

23 **V. Conclusion and Order**

24 The complaint states an Eighth Amendment excessive force claim and a First Amendment  
25 retaliation claim against defendant Mohammad. If plaintiff elects to proceed on the complaint as  
26 screened, the court will order service of the complaint on defendant Mohammad.

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1 No other claims are stated, but plaintiff is granted leave to amend. Plaintiff may use the  
2 attached form to notify the court whether he will proceed on the complaint as screened or file an  
3 amended complaint.

4 If plaintiff chooses to file an amended complaint, plaintiff has thirty days so to do. This  
5 opportunity to amend is not for the purposes of adding new, unrelated claims. George v. Smith,  
6 507 F.3d 605, 607 (7th Cir. 2007). Local Rule 220 requires that an amended complaint be  
7 complete without reference to any prior pleading. See Loux v. Rhay, 375 F.2d 55, 57 (9th Cir.  
8 1967). The amended complaint should be titled "First Amended Complaint" and should reference  
9 the case number.

10 In accordance with the above, IT IS HEREBY ORDERED as follows:

11 1. Plaintiff's motion to proceed in forma pauperis and renewed motion to proceed in  
12 forma pauperis (ECF Nos. 5, 8) are granted.

13 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action as set forth  
14 by separate order.

15 3. The Clerk's Office shall send plaintiff a blank civil rights complaint form.

16 4. Plaintiff's complaint (ECF No. 1) states an Eighth Amendment excessive force claim  
17 and a First Amendment retaliation claim against defendant Mohammad; no other claims are  
18 stated.

19 5. Within sixty (60) days of the date of this order plaintiff shall notify the court how he  
20 chooses to proceed. Plaintiff may use the form included with this order for this purpose.

21 6. Failure to respond to this order may result in a recommendation that this action be  
22 dismissed for failure to obey a court order and failure to prosecute.

23 Dated: October 3, 2024

24  
25   
26 SEAN C. RIORDAN  
27 UNITED STATES MAGISTRATE JUDGE  
28

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DEMETROIS T. DIXSON,

Plaintiff,

v.

F. MOHAMMAD,

Defendant

No. 2:24-cv-00332 SCR P

PLAINTIFF'S NOTICE OF ELECTION

Check one:

\_\_\_\_\_ Plaintiff wants to proceed on the complaint as screened with an Eighth Amendment excessive force claim and a First Amendment retaliation claim against defendant Mohammad. Plaintiff understands that by going forward without amending the complaint he is voluntarily dismissing all other claims.

\_\_\_\_\_ Plaintiff wants to amend the complaint.

\_\_\_\_\_ Plaintiff wants to stand on the complaint as filed after which the magistrate judge will issue findings and recommendations to dismiss all non-cognizable claims and a district judge will be assigned to the case and will determine what claims are stated.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Demetris T. Dixon  
Plaintiff pro se